IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 1847 of 2007()

AGAINST THE ORDER DATED 25/05/2007 IN CMP.531/2007 IN CMP.530/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE),ALAPPUZHA

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PETITIONER: PETITIONERS/ACCUSED:

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1. MATHEW C. MATHEW & SONS,
   KALLAN ROAD, FACTORY WARD, ALAPPUZHA, REP. BY ITS MANAGING PARTNER, MATHEW C.MATHEW.

2. MATHEW C. MATHEW,
   MANAGING PARTNER, MATHEW C.MATHEW & SONS,
   CHIRAYIL HOUSE, KALAVOOR, ALAPPUZHA.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.M.SUNILKUMAR

RESPONDENTS: RESPONDENTS-COMPLAINANT:

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1. BIJU JACOB, S/O.K.J.JACOB,
   MERYLAND, CMC-3, CHERTHALA.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1847 of 2007

Dated this the 8th day of June, 2007

ORDER

Petitioner has come to this Court complaining about the refusal for permission by the learned Magistrate to exempt him from personal appearance for 313 examination. The petitioner faces a prosecution under Section 138 of the Negotiable Instruments Act. The matter stands at the stage of 313 examination. The petitioner is not available. He is at Bombay in connection with his business. He is unable to appear. He has therefore applied to the learned Magistrate for exemption relying on the decision in **Basavaraj R.Patel v. State of Karnataka** [2000(3) KLT S.N 69 Case No.74]. The learned Magistrate found that there was no satisfactory reasons to justify invocation of the dictum in that case which is to be invoked and exercised only in exceptional cases.

2. Finally when this matter came up for hearing, the learned counsel for the petitioner makes only one short request and he prays that breathing time may be granted to the petitioner to appear before the learned Magistrate for 313 examination or to settle the matter and report composition. In two other connected cases also, his presence is required. Efforts are being made to settle those disputes also, so that composition can be reported to the learned Magistrate by the next hearing date.

3. I am satisfied, in these circumstances, that the latter short request can be allowed. The petitioner is granted time to appear before the learned Magistrate on 02.07.2007 for his 313 examination in this case.

4. This Crl.M.C is, allowed to the above extent.

(R.BASANT, JUDGE)

rtr/-